IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PEITTION NO.81 OF 2006
IN
NOTICE OF MOTION NO.226 OF 2006
IN
WRIT PETITION NO.1650 OF 2005

M/s.Shree Ram Mills Limited .. Petitioner.

V/s.

Indian National Trust for Art
& Culture Heritage & Others .. Respondents.

Mr.S.H. Doctor, senior counsel with Mr.P.A. Savant i/by Khaitan & Jaykar for the petitioner.

Mr.Siraj Rustomji with Mr.Kedar Dighe for respondent nos.1 to 3 (original petitioners)

Mr.K.K. Singhvi, senior counsel with Ms.Ajitkumar for B.M.C. - respondent No.5.

Mr.Mohan Salian i/by Gagrats for respondent No.18.

Mr.J.P. Sen i/by Federal & Rashmikant for respondent Nos.12, 13 and 22.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 8TH SEPTEMBER, 2006.

P.C. :

1. Heard Mr.Doctor and Mr.Savant in support of this review petition. Mr.Siraj Rustomji appears for respondent No.1 to 3.

2. This review petition prays that the order in terms of prayer clause (b) of the notice of motion No.64

of 2006 passed by this Court on 5th May, 2006 be recalled in so far as the same relates to respondent No.20 to the said notice of motion i.e. Shree Ram Mills Limited and that the said mill company be allowed to carry out the work as permitted under approval dated 12th July, 2005 read with I.O.D. dated 24th January, 2005 and commencement certificate dated 24th February, 2005.

3. Mr.Doctor, learned counsel appearing for the applicants (i.e. Shree Ram Mills Limited) has submitted that the applicants will have to be treated on par with N.T.C. He has pointed out that although as far as the private mills are concerned, this Court did grant injunction restraining them from demolishing the structures which had been listed as heritage structures, this Court did make an exception in favour of the mills of the N.T.C. under para 27(a) of the operative order. He pointed out that this was essentially because the listing of heritage structure was done on 22nd April, 2006 whereas the lay-out for the divisions of lands of N.T.C. under D.C. Regulation 58 had been sanctioned by the B.M.C. way back on 27th October, 2004. That was to be read along with condition No.10 and 11 which include the permission to demolish the disputed structures. Mr.Doctor pointed out that as far as the present applicants are concerned, they also have this approval

dated 12th July, 2005 in which condition No.2 permits that all the structures shown as proposed to be demolished on plan will be demolished before asking for further commencement certificate. These structures include the chimney which is sought to be demolished and which has now been restrained under para 27(b) of the said order.

4. Mr.Rustomji, learned counsel appearing for the original petitioners submitted that the approval dated 12th July, 2005 was not in the form under which it was to be given as per regulation 5 read with Section 45 of the M.R.T.P. Act. He also submitted that under clause 3 thereof, the approval was to remain valid for one year and that period was over. Be that as it may, the fact remains that this approval does include the permission to demolish the structures concerned as per clause 2 thereof and which structures include the chimney which has been notified as one out of the 23 structures.

5. Mr.Doctor has fairly accepted that some of these documents were not placed before the Court when the order was passed on 5th May, 2006. It is for this reason that this error has crept in. As far as Shree Ram Mills is concerned, it should have been excepted from the injunction which was imposed on the private mills under clause 27(b) of the said order. In fact

they had taken out a separate notice of motion bearing No.226 of 2006 for that purpose.

6. We accept this submission of Mr.Doctor because whatever may be the defects in the form of the document of approval, the fact remains that the permission to demolish had been granted to the Shree Ram Mills prior to the date on which the heritage list was published by the B.M.C. on 22nd April, 2006. Shree Ram Mills, therefore, cannot be treated differently and the same yardstick will have to be applied to this mill company which was applied to the N.T.C. mills.

7. For this reason, we allow this review petition in terms of prayer clause (a-1) and the aforesaid order dated 5th May, 2006 will stand recalled to that extent.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)